

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1148 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and  
MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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UDAJI JIVAJI DABHI

Versus

STATE OF GUJARAT

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Appearance:

MR KG SHETH for Petitioner

MR B.D.DESAI, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

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CORAM : MR.JUSTICE J.N.BHATT and  
MR.JUSTICE A.K.TRIVEDI

Date of decision: 25/06/98

ORAL JUDGEMENT Coram: Bhatt,J.

The appellant is found guilty for the offence punishable under section 302 ,I.P.Code and sentence to imprisonment for life and to pay fine of Rs.100/-,in default, S.I. for seven days , in sessions case No. 78 of 1990 by the learned Sessions Judge, Kheda at Nadiad on 30.11.1991.

The appellant has, therefore, challenged his conviction and sentence order by filing this appeal through jail. The appellant is provided legal aid. We have heard the learned advocate appointed for the appellant and also learned Additional Public Prosecutor Mr. B.D.Desai for the State and have also gone through the entire record.

This is a case of killing of wife, upon a motive that she was unable to bear child being impotent, despite married life of more than ten years. On 19.3.1989, the appellant and the deceased wife Dahiben staying at villager Nani Mudel had a quarrel at 8 p.m. The appellant inflicted stick blows, washing stick blows and blows with iron rod, causing serious injuries to her in the presence of brother of the deceased - p.w. No.3 Mafatbhai Ratabhai, ex. 10 who ran away being frightened of being beaten by the accused. He was in the house of the accused which is the venue of offence on the day of the incident as he and the accused were doing labour work and he had to take an amount of Rs.300/- from him. Therefore, he, on return from labour work, stayed with the accused. In fact, the deceased Dahiben, accused and p.w. 3 Mafatbhai, brother of the deceased were engaged in the labour work for making bricks at village Guchri. On the day of the incident, three of them returned to village Mudal in connection with celebrations of Holi festival. and witness Mafatbhai stayed in the house of the accused.

On that day, the accused starting taunting and teasing his wife. He told her that she was unable to do work and she was eating more. Thereafter, there was quarrel. The accused started giving stick blows after picking up stick which was lying in the corner of the house. Thereafter, he gave iron rod blows. She was also given blows with washing stick. The accused thereafter poured kerosene after dragging her inside the room from Osri with the help of her clothes. Witness Mafatbhai got frightened. He apprehended beating from the accused. He started for his house at Chhipdi village.

On the next day, like that, on 20.3.1989, Mafatbhai informed his cousin brother Vajesing. Thereafter, they went to the venue of offence and found the dead body of Dahiben with the help of a crack from the door, as the door of the house was locked from outside. Therefore, p.w. Vajesing lodged a complaint at Kathlal police before PSI D.M.Parmar. This is how offence of murder came to be registered.

Investigation was carried out and in due course of it,

muddamal articles by drawing a panchnama came to be collected. Clothes of the deceased, stick, washing stick, iron rod had been collected in presence of the panchas. Muddamal articles were sent to forensic science laboratory for examination. The dead body was sent to medical officer and post mortem was carried out by p.w.No.1 Dr. S.S.Patel who was examined at ex.6. He performed the post mortem at 6 p.m. on 20.3.1989. Post mortem report is produced at Exh.7. The accused came to be charge sheeted for the offence punishable under section 302 and the sessions court framed charge under section 302. In order to substantiate and fortify the charge, the prosecution relied on the evidence of the following witnesses:

1. Dr S.S.Patel, ex. 6
2. Vajesing Prabhatsing, ex. 9
3. Mafatbhai Ratabhai, ex. 10
4. Chandubhai Poonabha, ex. 11
5. Roopsing Galabsing, ex. 13
6. Ramabhai Ajubhai, ex. 15
7. Parbhatsing Mangalsing Parmar, ex. 17
8. N.K.Sumara EX.22

The prosecution also relied on the following documentary evidence in support of its case:

1. Accused's statement, ex. 4
2. Inquest panchnama ex. 12
3. Complaint ex. 18
4. Map ex 21

The learned trial Judge upon examination of the evidence, found the accused guilty for the offence punishable under section 302, IPC for killing his wife and sentenced for life imprisonment and fine of Rs. 100/- in default S.I. for seven days vide his judgment and order dated 30.11.1991 which is in challenge before us.

The prosecution case that the appellant committed murder of his wife by beating her with the help of stick, washing stick and iron rod at 8 p.m., in his house at Nani Mudel is rightly held proved by the trial court. Beating given by the accused to his wife had been witnessed by P.W.3 Mafatbhai Ratabhai, ex. 10. He is the real brother of the deceased and his presence in the house was natural as he along with his sister and accused, had gone for labour work at brick yard. Three of them had returned on the day of the incident for the purpose of celebrations of Holi festival and he stayed in the house of the accused as he had to take Rs. 300/- from

the accused in connection with labour work. It is clearly testified by him that the accused gave merciless beating to his sister Dahi after a quarrel with her. He had identified muddmal articles, stick, washing stick and iron rod and he had gone away after she became unconscious on account of severe beating by the accused to inform his brother and for taking further action, being also frightened. His evidence is rightly believed by the trial court. His testimony has remained unshaken. His presence in the house of the accused which is the venue of offence on the day of the incident is quite natural. The prosecution case is fully supported by Mafatbhai Ratabhai.

P.W.No.2 Vajesing ex. 9 is the elder brother of Mafatbhai who had lodged the complaint. After he was informed by his brother Mafatbhai, he had gone along with Mafatbhai and other persons at the house of the accused where he found a room in which dead body of the deceased was lying, locked from outside. The dead body was seen with the help of a crack in the door. His evidence also fully supports the case of prosecution. In order to take action against the accused, he went to Kathlal police station and lodged the complaint on 20.3.1989 which was recorded by PSI Parmar at 2.30 p.m. Kathlal police station is about 8K.Ms away from the place of the incident. It is very clear from the record that FIR came to be lodged at the earliest point of time without any delay and loss of time. It fully corroborates the prosecution version.

The medical evidence also lends material reinforcement to the prosecution version. It may be stated that in the testimony of P.W.1 Dr S.S.Patel, ex.6 who had conducted most mortem, had clearly testified that he noticed as many as 18 external injuries including five fractures on the dead body of the deceased. Dead body was brought to him by the police along with note at 4.30 p.m. on 20.3.1989. He started post mortem at 6 p.m. He has also clearly stated that there were six long lung injuries. Left ribs Nos.5,6 and 7 were also infracted. There were also serious external injuries on the lungs. Dr Patel clearly deposed that death was due to injuries to the lungs and internal haemorrhage. The evidence of the medical officer and the post mortem report ex. 7 materially corroborate the prosecution version and the testimony of the eye witness Mafatbhai.

There is one more aspect which also supports the prosecution case and it is the conduct of the accused. The accused, who is the husband of the deceased had nurtured

a grievance that his wife could not deliver a child and had a motive which culminated into severe beating with the help of muddamal articles, stick, washing stick and iron rod , had remained absconded for a spell of more than ten days after the incident which indubitably shows unnatural conduct of innocent husband. Ordinarily, in case of death of better-half, the natural conduct of the husband would be to take immediate action against the real assailant and also to take legal advice according to law. Unlike that, in the present case, the accused had remained absconded for a spell of ten days who came to be arrested by the police when he came from outside at the bus station at village Chhipdi . Thus unnatural conduct of the accused as a husband who absconded for a spell of ten days after heinous crime in which his wife came to be killed, is very important corroborative circumstance lending support to the prosecution version.

The prosecution has, therefore, successfully established the complicity of the husband -accused in killing his wife as there was motive for that. FIR came to be lodged at the earliest point of time at ex.18. Eye witness who is a close relative like the brother of the deceased whose presence in the house of the accused was natural , has fully corroborated the prosecution case. His evidence has remained unimpeachable. It is also supported by various other circumstances narrated above. The medical evidence also fully supports the case of prosecution. We have, therefore, no hesitation in finding that the trial court has rightly held the accused guilty for offence under section 302 as the culpability of the accused for killing his wife has been succinctly established without any shadow of doubt. In our opinion, therefore, there is no substance in the appeal which merits dismissal. Accordingly, the appeal is dismissed.

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